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ORIGINAL

MARK E. CHADWICK \*  
MICHAEL S. GREEN  
KATHLEEN DELANEY WINGER  
EVELYN PATRICK BOSS \*\*  
LAURA P. CHIASSON  
\* Also Admitted in Colorado  
\*\* Also Admitted in Washington State  
  
MICHAEL M. RACY (NON-LAWYER)  
GOVERNMENT RELATIONS DIRECTOR  
DIRECT LINE: (520) 906-4646

MEREDITH LEYVA (NON-LAWYER)  
PUBLIC RELATIONS MANAGEMENT

**MUNGER CHADWICK, P.L.C.**

ATTORNEYS AT LAW  
A PROFESSIONAL LIMITED LIABILITY COMPANY  
NATIONAL BANK PLAZA  
333 NORTH WILMOT, SUITE 300  
TUCSON, ARIZONA 85711  
(520) 721-1900  
FAX (520) 747-1550  
MungerChadwick.com

PHOENIX APPOINTMENT ADDRESS:  
5225 N. CENTRAL  
SUITE 235  
PHOENIX, ARIZONA 85012-1452  
(602) 230-1850

OF COUNSEL  
LAWRENCE V. ROBERTSON, JR.  
ADMITTED TO PRACTICE IN:  
ARIZONA, COLORADO, MONTANA,  
NEVADA, TEXAS, WYOMING,  
DISTRICT OF COLUMBIA

OF COUNSEL  
MILLER, LA SOTA AND PETERS, P.L.C.  
PHOENIX, ARIZONA

OF COUNSEL  
LIZÁRRAGA, ROBLES, TAPIA Y CABRERA S.C.  
HERMOSILLO, SONORA, MEXICO  
(LICENSED SOLELY IN MEXICO)

October 3, 2002

Colleen Ryan, Supervisor  
Document Control  
Arizona Corporation Commission  
1200 W. Washington  
Phoenix, AZ 85007

Arizona Corporation Commission  
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Re: Docket No. E-01345A-02-0707  
In the matter of Application of Arizona Public Service Company

Dear Ms. Ryan:

Enclosed for filing in the above-captioned proceeding are the original and thirteen (13) copies of Sempra Energy Resources' Reply to Arizona Public Service Company's Response to Motions to Intervene. Also enclosed are two additional copies to be conformed and returned to our office.

Please let me know if you have any questions, and thank you for your assistance.

Sincerely,

*Lawrence V. Robertson, Jr.*

Lawrence V. Robertson, Jr.

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enclosures

ORIGINAL

BEFORE THE ARIZONA CORPORATION COMMISSION

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COMMISSIONER

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IN THE MATTER OF THE )  
APPLICATION OF ARIZONA PUBLIC )  
SERVICE COMPANY FOR AN ORDER )  
OR ORDERS AUTHORIZING IT TO )  
ISSUE, INCUR, OR ASSUME )  
EVIDENCES OF LONG-TERM )  
INDEBTEDNESS; TO ACQUIRE A )  
FINANCIAL INTEREST OR INTERESTS )  
IN AN AFFILIATE OR AFFILIATES; TO )  
LEND MONEY TO AN AFFILIATES OR )  
AFFILIATES; AND TO GUARANTEE )  
THE OBLIGATIONS OF AN AFFILIATE )  
OR AFFILIATES )

Docket No. E-01345A-02-0707

**REPLY TO ARIZONA PUBLIC SERVICE  
COMPANY RESPONSE TO MOTIONS TO  
INTERVENE**

INTRODUCTION

Pursuant to the Chief Administrative Law Judge's ("CALJ") September 24, 2002 oral procedural directive, Sempra Energy Resources ("Sempra") submits its Reply to Arizona Public Service Company's ("APS") September 30, 2002 Response to Motions to Intervene ("Response").

In its Response, APS has argued an array of reasons why requests for intervention previously filed by Sempra and others should be denied. APS's Response was in large measure generic in nature. Thus, some of its arguments do not apply to the specific grounds upon which Sempra's September 26, 2002 Application for Leave to Intervene ("Application") was based. Further, as discussed below, APS' other arguments are without merit.

MUNGER CHADWICK, P.L.C.  
ATTORNEYS AT LAW  
NATIONAL BANK PLAZA  
333 NORTH WILMOT, SUITE 300  
TUCSON, ARIZONA 85711  
(520) 721-1900

1 The CALJ is familiar with the pleadings filed to date in the above-captioned proceeding, as  
2 well as the background from which that proceeding emerged. Hence, Semptra's comments in this  
3 Reply will be brief.  
4

5 DISCUSSION

6 Argument No. 1:

7 APS asserts in its Response that

8 " . . . Track B Merchant Intervenors clearly are not affected, directly  
9 or indirectly, substantially or in-substantially (*sic*), by the mere act of  
10 APS borrowing money or providing a corporate guarantee. . ." [page  
11 3, lines 9-11] [emphasis added]

12 APS' assertion strains credulity for it ignores its own statements in its September 16, 2002  
13 Application as to why the financing approvals and authorizations in question are being sought. APS'  
14 goal is to strengthen (if not restore) the ability of its generation affiliate to compete in the  
15 competitive wholesale electric market by shoring up that affiliate's credit rating through the  
16 extension of a loan and/or financial guarantee from APS. APS asserts that such loan is critical in  
17 order to fend off the potential downgrade of the affiliate's credit rating by one or more Wall Street  
18 rating agencies. To focus on the act of borrowing or extending a financial guarantee without  
19 examining the underlying purpose and effect is to be disingenuous at best. Moreover, it ignores that  
20 portion of A.A.C. R14-3-105(A) cited by APS, which looks to those who may be "affected by the  
21 proceedings." Such effect is to be ascertained in this instance by examining exactly why APS seeks,  
22 and how it would use, the requested financing approvals and authorization. When examined in that  
23 light, Semptra clearly is "directly and substantially" affected by this proceeding.  
24  
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1 Argument No.2:

2 APS further contends that there is “nothing in the APS Application that seeks to or could”  
3 adversely affect the competitive procurement process which is the subject of the Track “B”  
4 proceedings in the generic electric restructuring docket. [Response at page 3, lines 20-21] [emphasis  
5 added] What APS ignores is the fact that the competitive environment in which the results of the  
6 Track “B” process will unfold would be directly affected by implementation of the financing  
7 approvals and authorization APS seeks in this proceeding. Recent events in the energy industry have  
8 precipitated significant financial losses and added business risks on the part of non-utility market  
9 participants, resulting in an industrywide downgrading of credit ratings, the exact consequence APS  
10 and its affiliates seek to avoid by its Application. Such serendipitous propping up of APS’ affiliate  
11 in a time of general industry decline clearly would create a competitive advantage to an APS affiliate  
12 competing with these other market participants. Moreover, many of the merchant generators who  
13 will be competing with APS’ affiliates in Arizona do not have the ability to draw on the credit of  
14 affiliated utility companies to bolster their credit rating and reduce financing costs. Therefore,  
15 merchant intervenors have a clear interest in the amount and terms of financing supplied by APS to  
16 its affiliate and the impact of that financing on the creation of a level playing field. It is clearly in  
17 APS’ interest to elevate form over substance, and thereby overlook the aforementioned inter-  
18 relationship; but it should not be allowed to do so.

19 Argument No. 3:

20 At page 4, line 1 of its Response, APS chides one applicant for intervention for attempting  
21 “to assume the unfamiliar role of consumer advocate.” As an examination of Sempra’s Application  
22 discloses, Sempra has made no such assertion. Thus, APS’ argument is inapplicable as to Sempra.

1 Argument No. 4:

2 At page 4, lines 10-13 of the Response, APS dismisses concerns expressed by some as to the  
3 effect of APS's financing request on its creditworthiness as a purchaser in the competitive electric  
4 wholesale market. That ground for opposition is also inapplicable to Sempra's intervention request.  
5

6 Argument No. 5:

7 At page 4, lines 14-19 of its Response, APS cavalierly endeavors to dismiss the concern  
8 expressed by some applicants for intervention that the requested financing approvals and  
9 authorization could "result in a 'unfair competitive advantage'" for its generation affiliate. As noted  
10 above, APS continues to ignore statements in its own September 16, 2002 Application indicating  
11 that its purpose is to improve (if not restore) the competitive posture of PWEC. In that regard, in  
12 making the "de-minimis" argument it does at this point in its Response,<sup>1</sup> APS implicitly  
13 acknowledges the presence of an effect on the Track "B" competitive environment it attempts to  
14 deny in its argument numbers 1 and 2, as discussed above.  
15  
16

17 Argument No. 6:

18 Beginning at page 5, line 8 of its Response, APS shifts to a different line of attack, arguing  
19 that the Track B Merchant Intervenors do not have an interest in the above-captioned proceeding  
20 which warrants protection. In addition to complaining about how poorly it has fared thus far in the  
21 Track "A" and Track "B" proceedings, presumably as a consequence in part of these same Merchant  
22 Intervenors participation in those proceedings, APS cites three (3) decisions from other jurisdictions  
23 in support of its opposition. However, APS' reliance is misplaced.  
24

25  
26 <sup>1</sup> See Response at page 4, lines 19-22.  
27  
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1           In Re Ohio Power Company appears to be distinguishable from the instant procedural  
2 setting. More specifically, here there is no other present or foreseeable future proceeding in which  
3 to address the propriety of APS' intended use of the financing approvals and authorizations which it  
4 seeks. Once APS' Application has been granted, it has received all the necessary clearance it needs  
5 from the Commission to proceed with its plan to financially buttress its generation affiliate, thereby  
6 improving (if not restoring) PWEC's competitive posture vis-a-vis Sempra and others.

7  
8           The GTE Northwest Incorporated decision also appears to be distinguishable from the  
9 present situation. In that case, the Intervenor was concerned that the requested accounting  
10 treatment might give the regulated utility a competitive advantage. Here, APS has indicated a  
11 specific purpose of its request is to improve the competitive posture of its unregulated generation  
12 affiliate.<sup>2</sup> More specifically, APS' own September 16, 2002 Application clearly states that the  
13 proceeds and guarantees of the requested financing approvals and authorization will be used to  
14 improve (if not restore) its generation affiliate's competitive posture. Thus, there is no need to  
15 speculate as to what the effect will be in an area where Sempra has a direct and substantial interest.  
16 PWEC's competitive posture in the Track "B" competitive procurement environment will be  
17 enhanced from what otherwise would have been the case.

18  
19           Finally, the Monsanto Company case also appears to be distinguishable. Here, the substantial  
20 interest of Sempra and other merchant applicants for intervention lies in the functional integrity of  
21 that competitive environment which the Commission desires to create, and into which the Track "B"  
22 competitive procurement process will be introduced. The interest here is one of a public policy  
23 nature, not just economic considerations.  
24  
25  
26

27           <sup>2</sup> Further, in the GTE situation, the utility was also subject to ongoing regulation by the Washington Commission.  
28 In this situation, APS' unregulated generation affiliate will not be subject to such scrutiny and control.

MUNGER CHADWICK, P.L.C.  
ATTORNEYS AT LAW  
NATIONAL BANK PLAZA  
333 NORTH WILMOT, SUITE 300  
TUCSON, ARIZONA 85711  
(520) 721-1900

CONCLUSION

WHEREFORE, for all of the reasons discussed above, and those set forth in its September 26, 2002 Application for Leave to Intervene, Sempra requests that its Application for Leave to Intervene be granted as prayed for and that APS's arguments in opposition thereto be rejected.

DATED this 3<sup>rd</sup> day of October, 2002.

Respectfully submitted,

By: Lawrence V. Robertson, Jr.  
Lawrence V. Robertson, Jr.  
Munger Chadwick, P.L.C.

and

Theodore E. Roberts  
Sempra Energy Resources  
101 Ash Street, HQ 12-B  
San Diego, California 92101-3017

Attorneys for Sempra Energy Resources

The original and ten (13) copies of the above Application for Leave to Intervene was filed on October 3, 2002 with Docket Control.

Copies were e-mailed, or mailed  
to the following individuals on  
October 3, 2002, to:

Lyn Farmer  
Chief Administrative Law Judge  
Arizona Corporation Commission  
1200 West Washington  
Phoenix, Arizona 85007

Christopher Kempley, Chief Counsel  
ARIZONA CORPORATION  
COMMISSION  
Legal Division  
1200 West Washington  
Phoenix, AZ 85007

Ernest Johnson, Director  
ARIZONA CORPORATION COMMISSION  
Utilities Division  
1200 West Washington  
Phoenix, AZ 85007

Matthew P. Feeney  
Jeffrey B. Guldner  
SNELL & WILMER  
One Arizona Center  
400 E. Van Buren  
Phoenix, Arizona 85004

Thomas L. Mumaw  
PINNACLE WEST CAPITAL CORP  
LAW DEPARTMENT  
P.O. Box 53999, MS 8695  
Phoenix, Arizona 85004-3999

Jay L. Shapiro  
FENNEMORE CRAIG  
3003 N. Central Avenue, Suite 2600  
Phoenix, Arizona 85012



- 1 Arizona Reporting Service, Inc.
- 2 2627 N. Third Street, Suite Three
- 3 Phoenix, Arizona 85004-1103
- 4
- 5 Lindy Funkhouser
- 6 Scott S. Wakefield
- 7 RUCO
- 8 1110 W. Washington, Suite 220
- 9 Phoenix, Arizona 850070
- 10
- 11
- 12 Michael A. Curtis
- 13 William P. Sullivan
- 14 Paul R. Michaud
- 15 MARTINEZ & CURTIS, P.C.
- 16 2712 North 7th Street
- 17 Phoenix, Arizona 85006
- 18
- 19 Walter W. Meek, President
- 20 ARIZONA UTILITY INVESTORS
- 21 ASSOCIATION
- 22 2100 N. Central Avenue, Suite 210
- 23 Phoenix, Arizona 85004
- 24
- 25 Mary-Ellen Kane
- 26 ACAA
- 27 2627 N. 3<sup>rd</sup> Street, Suite Two
- 28 Phoenix, Arizona 85004
- 
- 18 Albert Sterman
- 19 ARIZONA CONSUMERS COUNCIL
- 20 2849 East 8th Street
- 21 Tucson, Arizona 85716
- 22
- 23 Jay I. Moyes
- 24 MOYES STOREY
- 25 3003 N. Central Ave., Suite 1250
- 26 Phoenix, Arizona 85012
- 27
- 28

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26  
27  
28

Roger K. Ferland  
QUARLES & BRADY STREICH LANG,  
L.L.P.

Renaissance One  
Phoenix, Arizona 85004-2391

Charles T. Stevens  
Arizonans for Electric Choice &  
Competition  
245 W. Roosevelt  
Phoenix, Arizona 85003

Greg Patterson  
5432 E. Avalon  
Phoenix, Arizona 85018

Aaron Thomas  
AES NewEnergy  
350 S. Grand Avenue, Suite 2950  
Los Angeles, California 90071

Gary A. Dodge  
HATCH, JAMES & DODGE  
10 W. Broadway, Suite 400  
Salt Lake City, Utah 84101

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